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REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR THE YEAR 1870-71.

ALLAHABAD:

PRINTED AT THE GOVERNMENT PRESS, NORTH-WESTERN PROVINCES.

1871.

16

XIII

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GOVERNMENT 1871 N.W.P.

REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR 1870-71.

No. 743 OF 1871.

FROM

A. COLVIN, ESQUIRE,

Secretary to the Board of Revenue,
North-Western Provinces.

To

C. A. ELLIOTT, ESQUIRE,

Officiating Secretary to Government,
North-Western Provinces.

DATED ALLAHABAD, THE 8TH AUGUST, 1871

SIR,

REVENUE DEPARTMENT
Present:
HON'BLE J. F. D. INGLIS,
AND
H. S. REID, ESQ

I AM directed to submit the Legal Remembrancers' Report for the year ending 31st of March, 1871. The dates on which the several Commissioners' Reports were received are noted in the margin.

Meerut, 26th April, 1871.	Benares, 13th June, 1871.
Agra, 20th May, 1871.	Jhansie, 8th May, 1871
Rohilkhund 8th June, 1871.	Kumaon, 8th May, 1871.
Allahabad, 22nd June, 1871.	Ajmere, 27th April, 1871.

2. The several Statements accompanying, six in all, have been thrown into an Appendix, where they can be more conveniently compared than if scattered, as hitherto, through the body of the Report.

3. The amount of litigation in the last three years has been as follows:—

Year.	Number of Suits.	Government, Plaintiff.	Government, Defendant.	Percentage in which Government was Plaintiff.	Percentage in which Government was Defendant.
1868-69 ...	279	104	175	37·2	62·8
1869-70 ...	218	78	140	35·7	64·3
1870-71 ...	250	81	169	32·5	67·5

4. Government appears in the Courts in several capacities, and the Board have caused a Statement to be prepared exhibiting the results of litigation separately in cases where (1) Government was concerned in its own behalf; (2) where the immediate interests involved were those of Municipalities; (3) where Local Funds were concerned; and (4) where Government appeared on behalf of Wards. It will be seen by reference to Appendix 2 that of a total of 250 cases instituted during the year, the distribution has been as follows:—

	Plaintiff.	Defendant.	Total.	PERCENTAGE.	
				Plaintiff.	Defendant.
Government	50	113	163	30·67	69·33
Municipalities	...	20	20	...	100
Local Funds	10	13	23	43·48	56·52
Court of Wards	21	23	44	47·73	52·27
Total	81	169	250	32·40	67·60

* The Statements, though originally received on the above dates, had in most cases to be returned. The last corrected Statement was received on 5th August.

5. It will be seen from Appendix 4 that 73 per cent. of the cases decided have been in favour of Government. Where Government has been plaintiff, 85 per cent. have been in its favour; where defendant, 68. Appendix 3 gives the figures for the last five years, showing the ratio in which Government suits have been successful. It will be seen that in no previous year has Government been so successful, 65 per cent. having hitherto been the highest proportion reached. This is especially the case where Government has been plaintiff, 85 per cent. of such suits having been successful, againt a maximum in former years of 77. In one year only (1866-67) has litigation been more favourable to Government in cases where Government was defendant, the per centage in 1866-67 being 72 against 68 in the year under review.

6. The percentages under the several classes of suits have been as follows:—

	Government, Plaintiff.				Government, Defendant.				Total.			
					Number		Percentage		Number		Percentage.	
	Number for.	Number against.	Percentage for.	Percentage against.	For.	Against.	For.	Against.	For.	Against.	For.	Against.
Original Suits, ...	20	2	91	9	54	27	67	33	74	29	72	28
Regular Appeals ...	2	6	25	75	19	7	73	27	21	13	62	38
Special Appeals ...	...	...	...	...	5	...	100	...	5	...	100	...
Applications ...	35	2	95	5	17	11	61	39	52	13	80	20
Total ...	57	10	85	15	95	45	68	32	152	55	73	27

The figures in the margin show the corresponding percentages extracted from the Report of the Legal Affairs of the Bengal Government for the year 1869-70 (page 2 of the Report).

	Government, Plaintiff.		Government, Defendant.	
	For.	Against.	For.	Against.
Original Suits ...	89·	11·	60·50	39·50
Regular Appeals ...	51·75	48·25	89·50	10·50
Special Appeals. ...	50·	50·	93·	7.

7. Under Regular Appeals (Government, Plaintiff) the percentage is apparently heavy against Government; but eight appeals only have been preferred, of which six went against Government, and of these one has since the close of the year under review been decided in favour of Government on special appeal before the High Court. The ratio of success in original suits is very satisfactory. By far the larger number of cases, it will be seen, were on behalf of Government itself. Pursuing the results of litigation through the four classes, we have the following figures:—

	Cases in which successful.	Cases in which unsuccessful.	Total.	Percentage for.	Percentage against.
Government ...	98	41	139	70·50	29·50
Municipality ...	11	7	18	61·11	38 89
Local Funds ...	13	3	16	81·25	18·75
Court of Wards ...	30	4	34	88 24	11·76
Total ...	152	55	207	73 43	26·57

8. The large number of cases in which Government has been compelled to sue on behalf of Local Funds and the Court of Wards, and their successful conduct, speaks

well for the judgment of the Local Officers. The number of, and proportion in which the several kinds of suits have fallen, is as follows :—

	Number.	Percentage.		Number.	Percentage.
Contract ...	... 27	10·8	To set aside orders	... 39	15·5
Exchequer ...	... 22	8·8	Trespass ...	... 5	2·1
Confiscation ...	... 30	12·	Trover ...	... 1	·4
Compensation ...	... 1	·4	Pre-emption ...	... 2	·8
Mortgage ...	... 1	·4	Rents or Zemindaree dues,	12	4·9
Ejectment ...	... 8	3·	Wages ...	... 2	·8
Crown lands ...	... 22	8·8	Costs ...	... 76	30·5
Escheats ...	... 2	·8			

9. Turning to the Divisional Statements, and omitting Kumaon and Jhansie, in which only three and four suits severally were instituted, we find in each Division, except Allahabad, a marked improvement in the percentage of cases decided in favour of Government. The figures are these :—

	1869-70.				1870-71.			
	Number for.	Percentage for.	Number against.	Percentage against.	Number for.	Percentage for.	Number against.	Percentage against.
Meerut	27	57	20	43	27	82	6	18
Rohilkhund	16	47	18	53	47	69	21	31
Agra	18	60	12	40	23	70	10	30
Allahabad	12	80	3	20	12	63	7	37
Benares	26	68	12	32	39	83	8	17
	99	60	65	40	148	73	52	27

10. Costs under Rohilkhund show, as last year, badly—nine cases having been given against Government. The other Divisions have good results under this head.

11. Appendix 2 shows that the cases decided for, and against, Government fall under the following heads :—

FOR GOVERNMENT.

Government.			*Municipality.*		
Contract	...	12	Contract	...	1
Exchequer	...	9	To set aside order	...	7
Confiscation	...	15	Trespass	...	1
Crown lands	...	8	Rents	...	1
To set aside orders	...	13	Costs	...	1
Trover	...	1	*Local Funds.*		
Pre-emption	...	1	Contract	...	3
Ejectment	...	1	Exchequer	...	2
Costs	...	38	Crown lands	...	2
			To set aside orders	...	3
			Costs	...	3

For Government.

Court of Wards.

Contract	...	3	Pre-emption	...	1
Exchequer	...	1	Rents	...	8
Confiscation	...	1	Ejectment	...	3
Trespass	...	2	Costs	...	11

Against Government.

Government.			*Municipality.*		
Contract	...	2	Contract	...	2
Exchequer	...	5	To set aside orders	...	3
Confiscation	...	9	Trespass	...	1
Crown lands	...	4	Costs	..	1
To set aside orders	...	5			
Trespass	...	1	*Court of Wards.*		
Mortgage	...	1	Zemindaree dues	...	1
Costs	...	14	Ejectment	...	1
Local Funds.			Wages	...	1
Crown lands	...	3	Costs	...	1

12. Appendix 6 shows the cost of litigation for the years 1869-70 and 1870-71. The figures for the different Divisions, omitting Kumaon and Jhansie, are these:—

	Cost incurred by Government.	*Awarded* For Government.	*Awarded* Against Government.	Recovered.	Remitted.	Balance.	Balance of past years.	Total Balance.
	1.	2.	3.	4.	5.	6.	7.	8.
	Rs. As. P	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.
Meerut ...	5,612 10 1	1,121 5 6	3,821 1 10	490 0 0	2 3 0	629 2 6	633 14 9	1,263 1 3
Rohilkhund,	4,781 3 3	3,687 11 6	1,543 12 11	787 14 6	...	2,399 13 0	2,690 2 11	5,089 15 11
Agra ...	739 12 0	418 0 1	141 0 1	74 10 0	...	343 6 1	1,255 7 4	1,598 13 5
Allahabad	1,143 7 3	1,897 7 0	1,370 0 9	483 10 0	...	1,413 13 0	106 10 9	1,520 7 9
Benares ...	,049 5 6	1,135 11 0	203 11 6	126 1 3	...	1,009 9 9	1,211 6 7	2,221 0 4

The large amount of costs incurred ,in Meerut Division is explained by the fact that no less a sum than Rs. 3,645-9-10 was awarded against Government in Boolundshuhur. This is owing to the case of Mussumat Khanzadee Begum which has recently been decided in the Privy Council.

The following shows the comparative cost of litigation in the Provinces generally for the last six years :—

	Incurred.	Awarded for Government
	Rs. As. P.	Rs. As. P.
1865-66	25,049 5 6	19,335 4 9
1866-67	33,163 4 8	19,637 11 1
1867-68	25,822 2 11	18,164 14 9
1868-69	17,368 10 6	10,972 2 2
1869-70	12,166 11 5	7,339 3 11
1870-71	13,307 9 6	8,286 14 1

The sudden decrease in the cost from 1868-69 is explained by the fact that from last year the Board have entered only the costs in decided cases.

13. It remains to notice briefly the most important suits of the year. This case was noticed in paragraph 23 of the Report for 1866-67, and in paragraph 28 of the Report for 1867-68. It will be remembered that an appeal was preferred on the part of Government to the Privy Council from the decision of the High Court, North-Western Provinces, dated 2nd July, 1866. The result was that the decision of the Court was affirmed and the appeal dismissed with costs. It was held by their Lordships on appeal that the respondent's title to the villages in dispute rested upon the decision of the Special Commissioners, that there was no allegation on the part of Government that the decree was other than a proper and binding one, and that respondent's title was subsequently confirmed by the decree of a competent Court.

Mussumat Khanzadee Begum *versus* Government.

14. The plaintiff in this case claimed possession of and establishment of right in certain lands amounting to 4,325 beegahs, 13 biswahs, as forming part of his zemindaree villages situate in Pergunnah Afzulgurh in the Bijnour District. The suit was originally brought against Rajah Sheoraj Singh of Kasheepore, the claim of the plaintiff being that the lands were situate within the limits of Russoolpore and other of the plaintiff's villages, and not in Kooa Khera, which had been granted by Government to Rajah Sheoraj Singh. Government was made a party to the suit, and it was contended on behalf of Government that the disputed lands never formed a part of either Kooa Khera or Russoolpore, but that they were reserved as a waste jungle. The plaintiff's claim has since been rejected.

Bussunt Singh *versus* Government.

15. This was a suit instituted to establish and obtain proprietary right by virtue of purchase over certain lands held by Benee Nath and others, situate in Colonelgunj, Allahabad, with a denial of the right of Government to assess inhabited portions of Colonelgunj, which had never previously, at any time, been assessed, and a claim for the refund of certain sums realized as rent. It was contended on the part of Government that plaintiff had been put in possession of the portions of land included in the deed of sale, and that Government had the right to assess the lands in question. It will be seen that there were two distinct questions raised—one of fact, as to whether plaintiff had been put in possession of the lands included in the deed of sale; the other of law, whether Government had the right to assess the lands in dispute. The first question was decided partly in favour of and partly against Government. As to the second, the Subordinate Judge found that, in the absence of evidence to the contrary, the first assessment of these lands by Government was made more than sixty years from the date of the right to assess, and was therefore barred by limitation. With regard, however, to the plaintiff's right to set aside the assessment barred by the law of limitation, it was held that the suit was brought more than three years from the date of the award of assessment, and was therefore barred under Clause 6, Section 1, Act XIV. of 1859. A special appeal was entered in the High Court from the above decision, and the case was remanded for re-trial, it having been wrongly held by the Subordinate Judge that the plaintiff's claim was barred by limitation under Clause 6, Section 1. The suit was ultimately compromised.

Huree Mohun Ghosal *versus* Government.

16. The facts of this case were as follows: On the 20th of August, 1868, a portion of the Punjab 30th Native Infantry went from Cawnpore to Delhi, leaving by a special train, and carrying their tents with them. The tents were loaded by the men of the Regiment in covered wagons on the troop platform of Cawnpore. After the train came up from the Troop to the Station platform, the tents in one of the wagons were discovered to be on fire. The fire having been extinguished, the burnt tents were left at the Station, and the troops proceeded on their journey. Government sued the Railway Company for Rs. 1,075, the alleged value of the tents. The defendants originally pleaded that the suit was barred by limitation, but this plea was subsequently with-

Government, *versus* the East Indian Railway Company.

drawn. The point at issue was, who were the parties responsible for the accident. It was held that the fire occurred through the negligence of the servants of the Railway Company, and that the Company was therefore responsible. A decree was obtained in favour of Government for Rs. 460-11-0, the remainder of the claim being dismissed. The difference between the amount claimed and that decreed arose from the Comptroller of Ordnance Accounts having misstated the value of the tents destroyed.

Mackinnon *versus* Government.

17. This case was mentioned in paragraph 27 of the Report for last year. Mrs. Mackinnon subsequently expressed her wish to withdraw from all further legal proceedings, and solicited a favourable reconsideration of the matter from His Honor the Lieutenant-Governor. The Commissioner of Meerut was requested to arrange the terms of a compromise, which has been effected, and the necessary measures for carrying it out are now in progress.

Lieutenant-Colonel Earle *versus* Government.

18. This was a suit brought by Colonel Earle, at Bareilly, against the Postmaster, North-Western Provinces, on account of the value of a package lost in the Government Bullock Train while in transit from Futtehgurh to Bareilly. The defence urged on the part of Government was that Government is not a common carrier under Act III. of 1865, but a bailee carrying for reward, and at liberty to restrict its responsibility, and that there can be no action against Government for any accident to or loss of goods in transit while under its charge. The claim amounting to Rs. 590 was decreed in full by the Subordinate Judge on the grounds that the notice of irresponsibility given in the *Postal Guide* was no notice; copies of the *Guide* being sold and not distributed gratis by Government, and that the special notice given on the back of the printed receipt did not protect Government in the present case, inasmuch as the loss did not arise from any of the causes mentioned therein. In appeal to the Judge it was held that Section 2 of Act III. of 1865, and Section 65 of Act XIV. of 1866, were not applicable to the case; but that the Government Bullock Train being subject to the law of common carriers, no conditions of its own can over-ride its obligation to the public under the general law. The appeal was dismissed with costs. A special appeal was then entered on the part of Government in the High Court with a view to determine, and, if necessary, amend the position of Government with reference to consigners of property. This appeal has recently, since the close of the year under review, been decided in favour of Government. The grounds on which the appeal was decided will be notified hereafter.

North-Western Provinces' Engineering Company *versus* Government.

19. This was an action brought in Cawnpore to recover Rs. 6,218-13-6, alleged to be due from Government on account of cost of work done on buildings and materials supplied for the same by the plaintiffs. The works referred to were for the most part buildings known as Nos. 2 and 3, the Echellon Barracks and Canteen. It was contended on the part of Government that plaintiffs had been paid in full for so much of the work as had been executed by them, according to certain rates specified in a schedule and agreed to by both parties, with the exception of Rs. 359-3-4, up to which amount Government admitted the claim. The remainder of the claim was, it was contended, due partly to the circumstance of the plaintiff's charging excessive and unauthorized rates, and partly to their charging for certain works which had not been executed, and for certain materials which had not been supplied. The case was subsequently submitted to arbitration, the result being that the arbitrators awarded the sum of Rs. 3,663-2-4 out of a total claim of Rs. 6,218-13-6. A decree was obtained in the Court of the Sub-Judge according to the terms of the award, and the remainder of the claim was dismissed.

Poorun Singh and others *versus* Government.

20. The plaintiffs brought a claim in the Court of the Deputy Commissioner, Jaloun, for a declaration of proprietary right in Mouzah Deraotee, Pergunnah Koonch, and for Set-

tlement of the Mouzah being made with them as sole proprietors. The Government demand on the property in dispute is Rs. 302. The facts of the case are as follows:—Mouzah Deraotee was formerly held by the plaintiffs' ancestors, who, in 1851, voluntarily transferred their rights and interests to one Purmahoy. In 1852 the village was sold to Narayanoo, Brahmin, and Jodha, Jât, for arrears of revenue. In 1855, it was again sold for arrears and bought in by Government. In 1859 there was a summary revision of assessments in the whole of the Jaloun District. This was carried out under the orders of Government by Captain Maclean, and settlement was made with Poorun Singh. In 1869-70, arrangements were made for a revision of settlement in anticipation of the expiry of the regular settlement of 1841. Mr. White, the Settlement Officer, recommended that the plaintiffs should be ousted at the expiry of the 1841 settlement, and that an 8-anna share in the property should be conferred on Jodha, the remaining 8-anna share being sold for the benefit of Government. These recommendations were sanctioned by Government in Government Order No. 126A., dated 28th January, 1870. Under these circumstances plaintiffs instituted their suit, alleging that the proprietary title in Deraotee was conferred on them by Captain Maclean with sanction of the Board and Government. The defence on the part of Government was that the plaintiffs were not the original proprietors of the estate, that they acquired it shortly before the Settlement of 1841, that in 1851 they alienated all their rights and interests therein, and that their status was that of farmers, not proprietors. The original suit was dismissed by the Deputy Commissioner on the grounds chiefly that the Settlement made with the plaintiffs by Captain Maclean did not carry with it the conferment of proprietary right, there having been no special confirmation on the part of Government, and that the proceedings of Captain Maclean were merely of a summary nature and were intended to come under review at the approaching regular settlement. The case is still pending on appeal in the Court of the Commissioner.

21. In conclusion the Board desire to acknowledge the valuable services rendered by Mr. Jardine, the Government Advocate, and by Baboo Peyaree Mohun, the Government Pleader. The Board have received great assistance from Mr. Jardine in the disposal of cases which have come before them in their capacity of Legal Remembrancers.

I have, &c.,

A. COLVIN,

Secretary.

APPENDIX I.

Civil Suits in which Government was concerned during the year 1870-71.

Description of Litigation.	Government, Plaintiff, Suits.								Government, Defendant, Suits.								Grand Total.					
	Pending at close of last year.	Instituted during the year.	Total.	Decided. For Government.	Decided. Against Government.	Pending.	Percentage on cases decided. For Government.	Percentage on cases decided. Against Government.	Pending at close of last year.	Instituted during the year.	Total.	Decided. For Government.	Decided. Against Government.	Pending.	Percentage on cases decided. For Government.	Percentage on cases decided. Against Government.	Number of Cases.	Cases decided.	For Government.	Against Government.	Percentage on cases decided. For Government.	Percentage on cases decided. Against Government.
Original Suits ...	5	23	28	20	2	6	91	9	14	78	92	54	27	11	67	33	120	103	74	29	72	28
Appeals Regular ...	4	5	9	2	6	1	25	75	10	24	34	19	7	8	73	27	43	34	21	13	62	38
Appeals Special ...	...	...	...	...	...	...	...	...	2	6	8	5	...	3	100	...	8	5	5	...	100	...
Applications ...	11	33	44	35	2	7	95	5	8	27	35	17	11	7	61	39	79	65	52	13	80	20
Total ...	20	61	81	57	10	14	85	15	34	135	169	95	45	29	68	32	250	207	152	55	73	27
Contract ...	4	10	14	12	1	1	92	8	2	11	13	7	3	3	70	30	27	23	19	4	83	17
Exchequer ...	1	1	2	...	1	1	...	100	3	17	20	12	4	4	75	25	22	17	12	5	71	29
Confiscation ...	2	1	3	2	1	...	67	33	8	19	27	13	8	6	62	38	30	24	15	9	62	38
Compensation ...	...	...	...	...	...	...	...	...	...	1	1	1	...	...	100	...	1	1	1	...	100	...
Mortgage ...	...	...	...	...	...	...	...	...	...	1	1	...	1	...	...	100	1	1	...	1	...	100
Ejectment ...	...	...	...	...	...	...	...	...	...	8	8	4	1	3	80	20	8	5	4	1	80	20
Crown Lands ...	...	4	4	1	1	2	50	50	2	16	18	9	6	3	60	40	22	17	10	7	59	41
Escheats ...	...	2	2	...	...	2	...	...	...	...	...	...	...	...	...	...	2	...	...	...	...	...
To set aside orders ...	...	1	1	...	1	...	...	100	8	30	38	23	7	8	77	23	39	31	23	8	74	26
Trespass ...	...	1	1	1	...	...	50	50	...	4	4	2	2	...	50	50	5	5	3	2	60	40
Trover ...	...	...	...	...	...	...	...	...	...	1	1	1	...	...	50	50	1	1	1	...	100	...
Pre-emption ...	...	1	1	1	...	...	50	50	...	1	1	1	...	...	50	50	2	2	2	...	100	...
Rents or Zemindaree Dues ...	2	6	8	6	...	2	57	43	...	4	4	3	1	...	57	43	12	10	9	1	90	10
Wages ...	...	...	...	...	...	...	...	...	1	1	2	...	1	1	...	00	2	1	...	1	...	100
Costs ...	11	34	45	34	5	6	87	13	10	21	31	19	11	1	63	137	76	69	53	16	77	23
Total ...	20	61	81	57	10	14	85	15	34	135	169	95	45	29	68	32	250	207	152	55	73	27

BOARD OF REVENUE, N.-W. P.,
ALLAHABAD:
The *August*, 1871.

A. COLVIN,
Secretary.

APPENDIX III.

Statememt showing the percentage of decisions for and against Government on the total Cases decided during the past five years.

All Divisions.	1870-71.		1869 70.		1868-69.		1867-68.		1866-67.	
	Percentage of decisions in favour of Government.	Percentage of decisions against Government.	Percentage of decisions in favour of Government.	Percentage of decisions against Government.	Percentage of decisions in favour of Government.	Percentage of decisions against Government.	Percentage of decisions in favour of Government.	Percentage of decisions against Government	Percentage of decisions in favour of Government	Percentage of decisions against Government.
Original Suits	72	28	59	41	79	21	70	30	74	26
Appeals Regular	62	38	65	35	44	56	59	41	41	59
Appeals Special	100	...	77	33	86	14	60	40	64	36
Miscellaneous Applications	80	20	56	44	56	44	55	45	87	13
Total ...	73	27	60	40	65	35	61	39	65	35
Government, Plaintiff, Suits.										
Original Suits	91	9	80	20	84	16	84	16	94	6
Appeals Regular	25	75	37	63	35	65	33	67	6	94
Appeals Special	...	...	80	20	80	20	...	100	...	100
Miscellaneous Applications	95	5	80	20	93	7	94	6	92	8
Total ...	85	5	74	26	77	23	77	23	51	49
Government, Defendant, Suits.										
Original Suits	67	33	55	45	77	23	67	33	71	29
Appeals Regular	73	27	80	20	48	52	66	34	74	26
Appeals Special	100	...	75	25	89	11	100	...	82	18
Miscellaneous Applications	61	39	20	80	18	82	3	97	60	40
Total ...	68	32	52	48	58	42	56	44	72	28

BOARD OF REVENUE, N.-W. P.,
ALLAHABAD:
The *of August*, 1871.

A. COLVIN,
Secretary.

APPENDIX IV.

Abstract of Litigation in Decided Cases by Divisions, 1870-71.

	Government, Plaintiff.					Government, Defendant.					Total.				
	Cases Decided.	For.	Against.	Percentage for.	Percentage against.	Cases Decided.	For.	Against.	Percentage for.	Percentage against.	Cases decided.	For.	Against.	Percentage for.	Percentage against.
Meerut	9	8	1	89	11	24	19	5	78	21	33	27	6	82	18
Kumaon	...	...	...	...	...	3	1	2	33	67	3	1	2	33	67
Rohilkhund	11	10	1	91	9	57	37	20	65	35	68	47	21	69	31
Agra	9	7	2	78	22	24	16	8	67	33	33	23	10	70	30
Jhansie	1	1	...	100	...	3	2	1	67	33	4	3	1	75	25
Allahabad	7	6	1	86	14	12	6	6	50	50	19	12	7	63	37
Benares	30	25	5	83	17	17	14	3	82	18	47	39	8	83	17
Total ...	67	57	10	85	15	140	95	45	68	32	207	152	55	73	27

APPENDIX V.

Abstract of the number and class of Cases under trial in each of the Divisions of the North-Western Provinces, during 1870-71.

Divisions.	Contract.	Exchequer.	Confiscation.	Crown lands.	Escheats.	To set aside orders.	Compensation.	Ejectment	Trespass	Trover.	Pre-emption.	Rent or Zemindaree Dues.	Wages.	Costs.	Mortgage	Total.
Meerut	5	1	1	4	...	13	1	1	...	...	...	...	...	16	1	43
Kumaon	3	...	...	..	...	...	...	...	...	...	...	...	...	...	...	3
Rohilkhund ...	2	6	23	2	...	5	...	5	2	...	...	...	...	31	...	76
Agra	4	2	...	11	2	18	...	1	1	...	...	..	..	2	...	41
Jhansie	1	...	...	2	...	1	...	...	...	...	...	...	...	...	...	4
Allahabad ...	5	10	5	3	...	...	...	...	...	...	...	...	...	4	...	27
Benares	7	3	1	...	...	2	...	2	3	1	1	12	2	23	...	56
Total ...	27	22	30	22	2	39	1	9	3	1	1	12	2	76	1	250

BOARD OF REVENUE, N. W. P.,
ALLAHABAD:
The *August*, 1871.

A. COLVIN,
Secretary.

APPENDIX VI.

Comparative Statement showing the cost of Litigation during 1870-71.

Division.	Year.	Costs incurred by Government.	Awarded		Recovered.	Remitted.	Balance.	Costs claimed by Government for past year.	Amount recovered during the year under report.	Amount remitted.
			For Government.	Against Government.						
		Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. As P	Rs. As. P.	Rs. As. P.
Meerut ...	1869-70 ...	2,445 15 11	919 0 3	534 1 5	471 6 9	...	447 9 6	1,596 7 2	362 4 2	...
	1870-71 ...	5,612 10 1	1,121 5 6	3,821 1 10	490 0 0	2 3 0	629 2 6	1,681 12 6	869 14 6	177 15 3
Kumaon ...	1869 70 ...	...	...	...	...	...	...	...	...	...
	1870-71 ...	8 8 0	4 0 0	29 1 0	...	...	4 0 0	...	...	...
Rohilkhund ...	1869 70 ...	5,739 9 7	3,182 4 7	2,604 0 0	420 4 9	...	2,761 15 10	3,040 12 7	2,476 6 6	...
	1870-71 ...	4,731 3 8	3,687 11 6	1,543 12 11	787 14 6	...	2,399 13 0	3,326 5 11	636 3 0	...
Agra ...	1869 70 ...	1,880 15 3	520 12 1	1,165 2 2	7 4 0	...	513 8 1	1,032 3 4	195 6 1	...
	1870-71 ...	739 12 0	418 0 1	141 0 1	74 10 0	...	343 6 1	1,350 5 4	94 14 0	...
Jhansie ...	1869-70 ..	...	...	...	...	...	...	...	...	...
	1870-71 ...	22 11 0	22 11 0	...	7 11 0	...	15 0 0	...	...	...
Allahabad ...	1869-70 ...	808 5 9	1 867 7 4	116 9 6	784 8 4	...	1,082 15 0	309 7 0	24 3 0	257 13 6
	1870-71 ...	1,143 7 3	1,897 7 0	1,370 0 9	483 10 0	...	1,413 13 0	1,110 5 6	1,003 10 9	...
Benares ...	1869-70 ...	1,291 12 11	819 11 8	415 15 3	687 2 11	...	132 8 9	3,042 12 1	1,892 11 6	8 13 0
	1870-71 ...	1,049 5 6	8,135 11 0	203 11 6	126 1 3	...	1,009 9 9	1,273 12 4	62 5 9	...
Total ...	1869-70 ...	12,166 11 5	7,309 3 11	4,835 11 10	2,370 10 9	...	4,938 9 2	9,021 10 2	4,950 15 3	266 10 6
	1870-71 ...	13,307 9 6	8,286 14 1	7,108 12 1	1,969 14 9	2 3 0	6,314 12 4	8,742 9 7	2,667 0 0	177 15 3

NOTE.—On account of subsequent alterations the figures shewn as "Costs claimed by Government for past years" against 1869-70 do not agree with those entered in last year's report.

A. COLVIN,
Secretary.

BOARD OF REVENUE, N.-W. P.,
ALLAHABAD:
The August, 1871.

ORDERS OF GOVERNMENT.

No. 574A. OF 1871.

FROM

C. A. ELLIOTT, ESQ.,

Offg. Secy. to Government, N.-W. Provinces,

To

A. COLVIN, ESQ.,

Secy. to the Board of Revenue, N.-W. Provinces.

DATED ALLAHABAD, THE 10TH NOVEMBER, 1871.

SIR,

JUDICIAL DEPT.

Acknowledges report.

I AM directed to acknowledge the receipt of the Report by the Board of Revenue, in their capacity of Legal Remembrancers, for the year 1870-71, submitted with your No. 743, dated 8th August, 1871.

Delay in its submission.

2. The report, though dated as above, was not received in this office until the 2nd October. This delay is attributable to the Press, but I am to point out that the date on which it was sent to Press is later than should have been the case. The lateness is explained as being due to the number of times the statements submitted by Commissioners had to be returned for correction. But the statements are so simple as to afford no excuse for discrepancies. The Lieutenant-Governor trusts that the Board will insist on the submission of these returns punctually in an accurate form.

Amount and classification of litigation.

3. *Paras.* 3 *and* 4.—The decrease in litigation which was observed last year has been partly made up during 1870-71, the number of suits for trial having risen from 218 to 250. From the table given in your 4th para., it appears that of these, 186 were cases in which Government was concerned in its own behalf or on account of its connection with Local Funds, 44 were Court of Wards cases, and 20 were cases in which the interests of municipalities were concerned The classification of cases thus made is a great improvement in the returns. Municipalities have by law a capacity of corporate action, though subject to the control of Government, and they may, consequently, be brought into Court for irregular and precipitate acts for which the Government as such may not be directly responsible. The case is similar with suits instituted or defended by the Court of Wards: the cause of action may be in respect of acts done by Government officers, as managers of wards' estates, or it may be on account of transactions which occurred prior to Government management or for which other parties are responsible. These two classes are, therefore, rightly shown separately. But it is not so clear that cases connected with the administration of Local Funds should be shown as distinct from Government cases proper; for the Local Funds are Government Funds, administered

either by Government or by Committees immediately under its control. The Board should consider whether there is any speciality in these cases which requires them to be separately exhibited in the returns.

Results of litigation.

4. *Para.* 5.—The results of litigation during the past year have been eminently satisfactory. Seventy-three per cent of cases were decided in favour of Government, against 60 per cent. in 1869-70. While last year was the worst in this respect of the five years from 1865-66, this year is the best. So successful a result gives an assurance of increasing carefulness and adherence to law on the part of the officers of Government in respect of the actions for which they sue and are sued, and also of their ability in the conduct of the suits.

How are compromised cases shown.

5. It is, however, observed that the returns only show cases decided for or against Government. I am to inquire how cases compromised, or those in which judgment is given partly for one side and partly for the other, are exhibited. Some such cases are noticed among those of which abstracts are given in the latter portion of the report.

Classification of results Regular and special appeals.

6. *Para.* 6.—The percentage of cases decided in favour of Government is highest in special (where every suit was successful) and lowest in regular appeals. The former result was to be expected from the valuable legal assistance which the Government receives in prosecuting such cases. With regard to regular appeals, it is observed that last year the percentage in favour of Government was 65; this year (the number of suits being 34) it has fallen to 62. This is the only point of an unsatisfactory character in the returns; and it shows the continuing necessity that the Board should vigilantly repress the inclination of their subordinates to follow up litigation unnecessarily beyond the first Court. In the vast majority of suits the first decision should be accepted: it is only in very exceptional cases, where important precedents or large interests may be involved, and there may be good grounds for not accepting the views of the lower Court, or some special advantage in obtaining a conclusive ruling from a higher Court, that appeals should be permitted.

Suits involving Municipalities and Court of Wards.

7. The Lieutenant-Governor notices from the statement in your 7th para. that Government litigation is least successful in cases where the action of municipalities is concerned, as in 39 per cent. of these suits judgment has been given against them. His Honor would be glad if the Board were to notice in their next report the description of cases in which municipalities sue or are sued. The excellent result in the Court of Wards cases, where the percentage of success is 88·24, contrasts favourably with the municipal litigation, and speaks well for the judgment of the local officers.

Suits regarding confiscation and Crown-lands.

8. *Para.* 11.—Among the classes of cases into which the litigation of the year is divided, it is observed that Government had least success in cases relating to confiscation and Crown-lands. The numbers of suits of the latter kind were small; 10 were decided for Government, and 7 against. Out

of 24 confiscation cases, 9 were successful; and of these 7 were in the Rohilkhund Division. Such cases are frequently accompanied by intricacies connected with mortgage incumbrances or claims of third parties, and this may explain the unfavourable result. It is to be hoped that this class of cases, now comparatively rare, will soon disappear altogether.

Suits for costs.

9. *Paras.* 8 *and* 10.—It is observed that of the 76 suits for costs under trial during the year, Government was defendant in 31. Of these, 11 were decided against Government, and of the 11, 9 were in the Rohilkhund Division. A similar unsatisfactory result was noticed last year in the case of this division. It is not understood why costs in cases in which Government is cast are not paid at once, and why there should be any necessity for bringing such suits at all. More detailed explanation on this head should be given in next year's report.

Divisional order of success.

	Division.	Percentage of cases decided in favour of Government.
1	Benares, ...	83
2	Meerut, ...	82
3	Agra, ...	70
4	Rohilkhund, ...	69
5	Allahabad, ...	63

10. *Para.* 9.—The table given in the margin shows the order in successful litigation of the different divisions. Allahabad, which was first last year, with a percentage of 80 in favour of Government, is lowest of all this year. His Honor hopes that this division will next year improve its position.

Costs of litigation.

	Rs.	a.	p.
Gross cost, ...	13,307	9	6
Recovered for costs incurred during year, ...	1,969	14	9
Recovered for past years,	2,667	1	0
Total, ...	4,636	15	9
Net cost of litigation, ...	8,670	9	9

11. *Para.* 12.—The net cost incurred by Government during the year was Rs. 8,670-9-9, as shown in the margin, leaving a balance due of Rs. 12,202-6-8, of which Rs. 5,897-10-4 are balances of past years, and Rs. 6,314-12-4 balances of costs awarded to Government during the year.

Recovery of costs.

12. In recoveries of costs, both of the year and outstanding balances, this year contrasts unfavourably with last. Only 23 per cent. of costs awarded during the year were recovered, against 32 per cent. recovered last year: while of outstanding balances only 35 per cent. were recovered, against 53 per cent. last year. In recoveries the divisions stand in the following order:—

Costs of the year.			*Costs of past years.*		
		Percentage.			Percentage.
1	Meerut, ...	43	1	Allahabad, ...	90
2	Allahabad, ...	25	2	Meerut, ...	51
3	Rohilkhund, ...	21	3	Rohilkhund	19
4	Agra, ...	17	4	Agra, ...	7
5	Benares, ...	11	5	Benares, ...	5

The recoveries for Agra, Benares, and Rohilkhund are very small, while the balances are considerable; and greater exertions should have been made to recover them. It is important at once to realize or at once to remit such claims. It can only in very rare cases be necessary to hold

the claim over in hope of assets becoming available; and any such postponement affords opportunity to the lower officials for corruption and annoyance. In the orders on last year's report the necessity for promptly writing off balances that were really irrecoverable was noticed. The remissions this year are, however, only Rs. 177-15-3, against Rs. 266-10-6 last year; and the Lieutenant-Governor is disappointed to find that so little has been done to carry out his instructions.

Remarks on selected cases.

13. *Paras.* 13-20.—The notes on important cases decided during the year are less full of information and interest than usual. The defect may possibly be due to a dearth of interest in the cases themselves, and the absence of important principles involved in their decision. But the circumstances might in some instances have been stated with more detail, so as clearly to bring out the chief legal issues involved and decided, to indicate to Government officers where technical errors or failures of justice have occurred and to prevent the recurrence of any such irregularities. His Honor observes the absence of any mention of the important cases concerning the Soonwanee estate, now under the Court of Wards. He would have been glad to have had some account of these suits.

Concluding remarks.

14. In conclusion, I am to convey an expression of His Honor's sense of the valuable services rendered by Mr. Jardine, Government Advocate, and Baboo Pearee Mohun Banerjea, the Government Pleader. I am also to offer to the Board His Honor's cordial acknowledgments of the ability and success with which they have conducted the legal business of the Government during the year.

I have the honour to be,

Sir,

Your most obedient Servant,

C. A. ELLIOTT,

Offg. Secy. to Govt., N.-W. Provinces.